IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.892 OF 2006

Shri Shankarrao Dhondiba Mane & Ors. ...Appellants

Versus

Smt.Akkatai Appana Chavan & Ors. ...Respondents

Shri S.M.Kamble for the Appellants.
Shri S.A.Pawar for the Respondent Nos.1 to 3.

CORAM : ABHAY S.OKA, J.
DATED : JULY 10, 2007.

P.C.:

1. Submissions of the learned Advocates appearing for the parties were heard yesterday. The Second Appeal is preferred by the original Defendants. The first to third Respondents are the original Plaintiffs and the fourth Respondent is the original 4th Defendant.

2. The first to third Respondents are the daughters of deceased Dhondiba Mane. The Appellants are the sons of deceased Dhondiba. A suit for partition and possession of separate shares was filed by the first to third Respondents. The suit was dismissed by the trial Court by holding that the Appellants have established that the suit properties were already partitioned. The learned trial Judge held that the Respondent Nos.1 to 3 have failed to establish that the suit properties were joint family properties. The Appeal preferred by the

first to third Respondents has been allowed by the District Court. The District Court held that the first to third Respondents were entitled to get undivided share in the share of their deceased father in the ancestral properties. Therefore, the District Court held that the first to third Respondents as well as the fourth Respondent being the daughters of deceased Dhondiba were entitled to an undivided share. A decree for partition was passed accordingly.

3. The submission of the learned Advocate for the Appellants is that the first to third Respondents were married prior to the year 1956 and therefore, they were not entitled to claim any share in the property. He submitted that there was enough evidence on record to show the earlier partition effected of the suit properties and infact a diary entry has been made in revenue record to which the first to third Respondents have consented.

4. I have considered the submissions. The Appellate Court has granted a share to the first to third Respondents and to their sister only in the undivided share of the deceased father in the joint family properties. The learned Judge observed that deceased Dhondiba was entitled to one fifth share in the

suit properties by survivorship. The learned Judge applied concept of notional partition under section 6 of the Hindu Succession Act, 1956.

5. The Appellate Court has disbelieved the case made out by the Appellants as regards alleged partition. The finding of fact on the issue of partition recorded by the Apellate Court is based on appreciation of oral and documentary evidence on record. No substantial question of law arises. Second Appeal is accordingly dismissed. No orders as to costs.

JUDGE